No. 22202

United States Court of Appeals for the Ninth Circuit

ALBERT E. LEUTHOLD, Superintendent of Banks, State of Montana, Helena, Montana, SECURITY BANK, and MINERS BANK OF MONTANA, N.A.,

Appellants,

-vs-

WILLIAM B. CAMP, Comptroller of the Currency,

Appellee.

THE FIRST NATIONAL BANK OF BUTTE and DALY NATIONAL BANK OF ANACONDA,

Appellee-Intervenors.

On Appeal from the United States District Court for the District of Montana

Brief of Appellants

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Filed ..... JAN 22 1968 ....., 1968

..... Clerk

BILLINGS GAZETTE PRINT

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Brief of Appellants

I.

JURISDICTION

Complaint (R. 2-12) was filed November 23, 1966, against William B. Camp, Comptroller of the Currency. Jurisdiction was based upon 5 U.S.C. Section 1009, and 28 U.S.C., Sections 1331, 1337, 1346, 1348 and 2201. The amount in controversy was alleged to exceed $10,000. Defendant Camp denied that jurisdiction existed (R. 45). Defendant-Intervenors also denied the jurisdictional allegations (R. 42, paragraph IX). At the proceedings of August 7 and 8, 1967 (Tr. 1 to 224) evidence was adduced relevant to the damages that would be suffered by Plaintiff-Appellant banks under the proposed new management of the First National Bank of Butte.

The District Court held (R. 55) that it had jurisdiction and that all parties had standing to sue. The District Court found (R. 52) that the controversy with Plaintiff-Appellant Miners Bank is in excess of $10,000, and it specifically made no findings as to the damages which would be sustained by Plaintiff-Appellant, Security Bank.

The District Court by an Opinion and Order, dated August 29, 1967 (R. 54) in addition to its holdings noted above, held that the decisions of the Comptroller of the Currency relating to branch banking were subject to

review by U. S. District Courts under the Administrative Procedure Act (5 U.S.C. §1001 et seq. — now 5 U.S.C. §701 et seq). Otherwise the District Court denied all motions. The Opinion and Order was appealed from by giving Notice of Appeal (R. 66) on August 29, 1967, and filing a bond on appeal in the amount of $250 (R. 74). On October 9, 1967, Appellants filed a Statement of Points upon which they relied (R. 71) and a Designation of Record on Appeal (R. 75). The said Notice of Appeal was filed within 30 days of the Opinion and Order in accordance with Rule 73, F.R.C.P.

The Clerk of the District Court failed to enter a formal judgment as required by Rule 58, F.R.C.P. On November 8, 1967, a formal judgment was entered nunc pro tunc as of August 29, 1967, the same date as the District Court's Opinion and Order.

The jurisdiction of this Court depends upon Title 28, U.S.C., Section 1291.

II.

QUESTIONS PRESENTED

A.

Whether, pursuant to Section 36(c)(1)(2) of the National Bank Act, the Comptroller of the Currency may authorize a national bank to maintain a consolidated bank as a branch where state law prohibits branch banks but allows the maintenance of an office, after consolidation, in the location of the consolidating bank.

B.

Whether, pursuant to Section 36 (b)(2)(A) of the National Bank Act the Comptroller of the Currency may authorize a National bank to maintain a consolidated bank as a branch where state law would prohibit the establishment of the consolidated bank as a new branch under Section 36(c) of the National Bank Act.

C.

Whether, pursuant to Section 3(d) of the Bank Holding Company Act (Title 12, §1842(d) U.S.C.) the Comptroller of the Currency may approve the acquisition of the assets of a Montana bank by a Montana subsidiary bank of a Minnesota bank holding company.

III.

STATUTES INVOLVED

A.

Section 36(b) of the National Bank Act, 12 U.S.C., Sec. 36(b)(2) provides in pertinent part as follows:

> "A National bank . . . resulting from the consolidation of a national bank . . . under whose charter the consolidation is effected with another bank . . . may retain and operate as a branch any office which immediately prior to such consolidation was in operation as —
>
> > "(A) a main office or branch office of any bank . . . participating in the consolidation if, under subsection (c) of this section, it might be established as a new branch of the resulting bank. . ."

B.

Section 36(c) of the National Bank Act, 12 U.S.C., Section 36(c)(2) provides in pertinent part as follows:

"A national banking association may, with the approval of the Comptroller of the Currency, establish and operate new branches:

* * * *

at any point within the State in which said association is situated, if such establishment and operation are at the time authorized to state banks by the statute law of the State in question by language specifically granting such authority affirmatively and not merely by implication or recognition; and subject to the restrictions as to location imposed by the law of the State on State banks."

C.

12 U.S.C., §81 provides:

"The general business of each national banking association shall be transacted in the place specified in its organization certificate and in the branch or branches, if any, established or maintained by it in accordance with the provisions of section 36(c) of this title."

D.

Section 5-1028, Revised Codes of Montana, 1947, provides:

"No bank shall maintain any branch bank, receive deposits or pay checks, except over the counter of and in its own banking house." (Enacted Sec. 101, Chapter 89, Laws of 1927.)

E.

Section 5-1124, Revised Codes of Montana, 1947, provides:

"When any two or more banks located in the same county or in adjoining counties shall consolidate in accordance with the provisions of Section 5-1021, the consolidated bank may . . . , upon the written consent of the superintendent of banks and under rules and regulations promulgated by him, maintain and operate offices in the location of the consolidating banks." (Enacted Sec. 1, Chapter 129, Laws of 1931.)

F.

Section 5-1021, Revised Codes of Montana, 1947, provides in pertinent part as follows:

"Any two or more banks . . . may . . . consolidate . . . into one bank under, into and with the charter of either existing bank hereinafter referred to as the consolidated bank . . . .

* * * *

"Upon such consolidation the corporate franchise . . . of such consolidating bank and banks shall . . . be and become merged and continued in and held . . . by the consolidated bank . . . ." (Enacted Sec. 94, Chapter 89, Laws of 1927; amended Sec. 1, Chapter 108, Laws of 1931.)

G.

Section 3 of the Bank Holding Company Act (12 U.S.C. §1842, as amended) provides in pertinent part as follows:

"(a) It shall be unlawful, except with the prior approval of the Board (Board of Governors of the Federal Reserve System) . . . (4) for any bank holding company or subsidiary thereof, other than a bank, to acquire all or substantially all of the assets of a bank;

* * * *

"(d) Notwithstanding any other provision of this section, no application shall be approved under this section which will permit any bank holding company or any subsidiary thereof to acquire, directly or indirectly, any voting shares of, interest in, or all or substantially all of the assets of any additional bank located outside of the State in which the operations of such bank holding company's banking subsidiaries were principally conducted on July 1, 1956 (misprint U.S.C.A. pocket part — reads July 1, 1966) . . . unless the acquisition of such shares or assets of a State bank by an out-of-state bank holding company is specifically authorized by the statute laws of the State in which such bank is located, by language to that effect and not merely by implication . . . ."

IV.

STATEMENT OF THE CASE

The case was submitted to the United States District Court for the District of Montana on cross motions for summary judgment by plaintiffs and defendant Comptroller of the Currency, and on motion to dismiss by defendant Comptroller and intervenor defendants.[1] After argument was had on these issues trial was had and the Court made Findings of Fact and entered its Opinion and Order.[2] Briefly summarized, the facts are as follows:

On October 1, 1966,[3] Daly National Bank of Ana-

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1 R. 33, 34, 37.
2 R. 51. 54.
3 The essential facts as pleaded in the complaint (R. 2) are admitted in the defendants' responsive pleadings (R. 41, 45), or stipulated at the trial (Tr. 9), or resolved by the Court's Findings of Fact (R. 51).

conda, Montana, ("Anaconda Bank") applied to James J. Saxon,[4] Comptroller of the Currency ("Comptroller") for his approval of a proposed consolidation with The First National Bank of Butte, Butte, Montana, ("Butte Bank") under the charter of the Anaconda Bank and with the title "First National Bank." In the application it was proposed (Pl's Exh. 10, p. 3) that the Butte bank be maintained as a branch of the consolidated bank, to be called "First National Bank, Butte Division."

Northwest Bancorporation of Minneapolis, a bank holding company, owns 2912 of the Anaconda bank's 3,000 outstanding shares (Tr. 17, 18). Under the proposed consolidation (Pl's Exh. 11) the stockholders of the Butte bank were to receive shares of Northwest Bancorporation stock in return for the transfer of the assets of their bank to the Anaconda bank. (Alleged by Plaintiffs, R. 4, Par. 9; admitted by Defendant Camp (R. 46 Par. 6) and Intervenors (R.42, Par. VI.))

On September 29, 1966, at the request of Plaintiff Albert E. Leuthold, Montana Superintendent of Banks, Forrest H. Anderson, Attorney General of Montana, rendered an opinion (Pl's Exh. 1) that a national bank formed by consolidating two national banks in Mon-

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4 Plaintiffs' Exh. A, proceedings of August 7, 8, 1967.

tana may conduct a banking business in the location of only one of the consolidating banks.

This action was commenced on November 23, 1966, to obtain a declaratory judgment (a) that the comptroller is prohibited by 12 U.S.C. §§ 36 and 81 from approving the application of the Anaconda bank under the title "The First National Bank" to conduct its banking business in more than one location in Montana; (b) that the Comptroller is prohibited by 12 U.S.C. §1842 and Public Law 89-485 from approving the consolidation of the Anaconda and Butte banks, and for injunctive relief against the consolidation and proposed branch bank.

Subsequently the Anaconda bank and the Butte bank intervened as parties defendant.

On August 29, 1967, the District Court rendered its opinion and Order, (R. 54) denying all pending motions and denying all relief to Plaintiffs. In its Opinion and Order the District Court held:

1. That all parties plaintiff have standing to sue.
2. That the District Court had jurisdiction of the controversy.
3. That the decisions of the Comptroller relating to branch banking are subject to review under the Administrative Procedure Act.[5]

In its opinion the District Court concluded that the

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5 5 U.S.C., §1001, et seq. (Now U.S.C., (Now 5 U.S.C., §701, et seq.)

Montana statute providing for the maintenance of an additional *office* after the consolidation of two banks constituted an exception to the Montana statute prohibiting *branch banks*. In doing so the District Court reasoned that the term "office" must have been intended by 1931 legislators to mean "branch bank" because there was, in 1931, no other image of a bank office than a full-fledged branch bank.

Concerning the Bank Holding Company Act aspects of the case, the District Court concluded that 12 U.S.C., §1842(a) allows a Montana subsidiary bank of a foreign holding company to acquire the assets of another Montana bank, and that 12 U.S.C., §1842(d) does not limit that right.

The District Court did not consider in any way the applicability of 12 U.S.C., §36(b).

Following the District Court's Opinion and Order, Plaintiffs filed notice of appeal and moved for an injunction restraining approval of the application until this appeal had been heard and decided. The District Court denied that motion. The same motion was made by Plaintiffs in this Court and the motion was again denied. Shortly thereafter the Comptroller issued his certificate approving the application, the consolidation was effected, and the Butte bank is at this time doing business as a branch of the Anaconda bank.

V.

SPECIFICATIONS OF ERROR

1. The District Court erred in refusing to grant plaintiffs' prayer for declaratory relief and injunction.

2. The District Court erred in refusing to grant plaintiffs' Motion for Summary Judgment.

3. The District Court erred in denying plaintiffs all relief.

4. The District Court erred in its failure to find that damages will be sustained by plaintiff Security Bank as a result of the proposed consolidation.

5. The District Court erred in that it failed properly to construe and apply the pertinent provisions of statutory law, including, but not limited to, the following:

12 U.S.C., §36(c)(2)

12 U.S.C., §36(b)(2)

12 U.S.C., §81

12 U.S.C., §1842, as amended by Public Law 89-485

Sec. 5-1028, R.C.M., 1947

Sec. 5-1124, R.C.M., 1947

VI.

SUMMARY OF ARGUMENT

Branch banking has been a source of concern to the national Congress and to the state legislatures for more than forty years. Until the McFadden Act of 1927, (44

Stat. 1228) and the Glass Acts of 1933, (48 Stat. 189) state chartered banks had a strong competitive advantage with their free access to branching. With the passage of the McFadden and Glass Acts, Congress equalized the competitive aspects of banking.

Branch banking is not a subject that banking people are neutral about. Any review of banking legislation over the recent past testifies to this. A review of recent banking litigation also reveals a strong predilection on the part of Comptroller Saxon, the predecessor of defendant in this case, to advance the competitive advantage of national banks over state banks, by the too-ready approval of branches, and consolidation, that have frequently been proscribed by state law. We view the consolidation here as proscribed by both Montana statute, the National Bank Act, and the Bank Holding Company Act.

It is Appellants' contention that when the Montana legislature prohibited *branch banking* in 1927 it prohibited it in all its various forms; that when it passed a separate law on the subject in 1931, allowing *offices* to be maintained after consolidation of two banks, it intended to allow only a limited form of branch banking. We base this contention on (a) historic considerations and (b) standard rules for interpreting legislative intent.

Appellants contend that if we must interpret the

Montana statutes to determine that *branch banking* was intended by allowing *offices,* the requirements of Sec. 36(c) of the National Bank Act are not met because the statute law of Montana would then only allow branching by implication.

In any case Sec. 36(b) of the National Bank Act prohibits the conversion of the Butte bank into a branch of the Anaconda bank because under Montana law it could not be established as a new branch.

Finally, Appellants contend that the Bank Holding Company Act absolutely prohibits the acquisition of the Butte bank by a Minnesota holding company, whether it makes the acquisition by means of a subsidiary or directly.

VII.

ARGUMENT

A. Section 36(c) of the National Bank Act Prohibits the Maintenance of a Branch Bank After Consolidation of Two National Banks.

1. *At the time of enactment of Sec. 5-1124, R.C.M. 1947, the concept of a banking office as something less than a branch was well known.*

It is now well settled that national banks may maintain branch banks to the same extent as state banks. No more, and no less. The Supreme Court of the United

States has recently held[6] that when Congress enacted §36(c)(1) and (2) of the National Bank Act it "intended to place national and state banks on a basis of 'competitive equality' insofar as branch banking is concerned."

Accordingly, when a national bank seeks to branch one must look to the law of the state where the branch is to be located to determine whether that state permits branching, and if it does, to what extent.

Appellants contend that *branch banking* in its unrestricted sense is prohibited in Montana; and we concede that *branch banking* in a limited sense is allowed in Montana, to the extent that an *office* may be maintained after consolidation; but contend that an *office* in Montana is something less than a branch bank, and was so intended to be by the 1931 Montana Legislature.

Appellees contended in the District Court that the term *office* in Sec. 5-1124, R.C.M. 1947, must mean *branch bank* in the unrestricted sense because it could not mean anything else. The District Court adopted Appellee's contention (R. 61), saying:

> "In the absence of a compelling reason for believing that the word 'office' was used in some limited

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6 **First National Bank of Logan, Utah, v. Walker Bank and Trust,** and companion cases, 385 U.S. 252, 87 S. Ct. 492 (1966). In this case the Comptroller argued that because the **concept** of branch banking was acceptable in Utah, national banks could branch willy nilly without regard to the limitations on branching imposed on state banks. The Court rejected the argument with the comment, "It is a strange ar-argument that permits one to pick and choose what portion of the law binds him."

sense, it must be given its ordinary meaning, and in its ordinary meaning the word 'office" describes a place where banking business is done."

The District Court also said (R. 60):

"The main problem is to find the intention of the legislature. The first place to look for that intention is in the words used. What did a Montana legislator reading the word 'office' in the bill which became §5-1124 contemplate? Did he envisage a space in which tellers stood behind counters, received deposits and cashed checks, and officers sat at their desks, frowned and made loans? It is probable that he did, because in Montana, at least, there is no other image of a bank office.[7]

Putting to one side for the moment the rules for interpretation of legislative intent, ignored by the District Court, Appellants will first argue against the District Court's line of reasoning.

The term *branch bank* is a generic term which embraces any banking activity conducted at a location away from the parent banking institution. The Federal Reserve Board in an analysis of branch banking[8] said under the heading, "Terminology":

"In the following summaries it will be noted that different terms are used in certain states in place of the term 'branches.' These are 'agencies,' 'offices,' 'branch banks,' 'stations,' and 'locations.'

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7 It should be noted that in Montana there is no image of a branch bank. There has never been a branch bank in Montana.

8 FEDERAL RESERVE STUDY OF BRANCH BANKING IN THE UNITED STATES, 1932 Fed. Res. Library, H G 1617 V. I, Vol. 2, p. 182.

"Most of these terms seem to have been adopted as euphemisms for branches where prejudice or law stood in the way of branch operation. This is the case with 'offices,' 'additional offices,' tellers' windows,' 'stations,' and 'locations.' *In general also these terms connote a limitation of function, as in Iowa and Wisconsin, where the purpose is to restrain branches from competing on equal terms with single office banks.*

* * * * *

". . . The word branch has been used, therefore, as the general synonym for all the special and local terms, such as 'branch bank,' 'agency,' 'office,' . . ." (Emphasis supplied)

The foregoing reflects the understanding of the Federal Reserve Board, writing in 1932, shortly after the Montana *offices* statute was enacted. Purely as a a semantic argument then it is logical to say that in 1927 Montana prohibited branch banking (Sec. 5-1028, R.C.M. 1927), in any and all of its conceivable forms. It follows then that when the Montana legislature enacted the *offices* statute in 1931 it intended to allow a limited form of branch banking, that is to say, *offices.* Especially is this true if it can be demonstrated that there was in 1931 an antipathy to branch banking and a knowledge of, and a demand for, a subsidiary banking facility that was something less than a complete branch bank. Such a knowledge and demand can be demonstrated.

Prior to 1927 when the McFadden Act (44 Stat.

1228) was enacted, national banks were absolutely prohibited from maintaining branch banks. Attorney General Wickersham had rendered an opinion on May 11, 1911,[9] that a national bank was restricted in the carrying on of a general banking business to one office or banking house in the place designated in its certificate of organization. Under this ruling national banks suffered a considerable competitive disadvantage because state chartered banks were branching extensively. The result was the conversion of national banks to state charters to meet the competition. In an apparent effort to combat this problem, the Secretary of the Treasury sought an opinion from Attorney General Daugherty, modifying the Wickersham opinion.[10] The Secretary of the Treasury's request asked about the power of national banks "to open and operate *offices* at places other than their banking houses." (See Appendix A)

In response to this request Mr. Daugherty, on October 3, 1923, rendered his opinion. (Appendix A) The substance of his opinion, so far as we are concerned, is:

> ". . . a national banking association may establish in the city or place designated in its certificate of organization an *office or offices* for the transaction of business of a routine character, which does not

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9 29 Op. Atty. Gen'l. 81.

10 THE BRANCH BANKING QUESTION, Charles Wallace Collins, The MacMillan Company, 1926. Library of Congress HG 1616 C6 (Mr. Collins was a former Deputy Comptroller of the Currency).

require the exercise of discretion . . . It may not, however, establish a branch bank to do a general banking business. . . ."

Following this opinion and on October 26, 1923, the Comptroller of the Currency issued regulations "relating to the establishment of additional offices by national banks." (Appendix B)

Roy A. Young, Governor of the Federal Reserve Board testified in 1930,[11] concerning "branches, agencies, or additional offices," repeatedly differentiating in that fashion, with the implication that they were three distinct concepts.

2. A Montana Legislator in 1931 could see a need for banking offices but not for branch banking.

Beginning in 1921, Montana banks began to fail, with 21 failures that year. There were 31 in 1922, 77 in 1923, 46 in 1924, and 28 from 1925 to 1929. A total of 203 bank failures.[12] The vast majority of failures were in extremely small, and frequently isolated towns. (Appendix C) Of the 203 failures only 23 were in such relatively sophisticated cities as Butte, Glasgow, Helena, Missoula, Whitefish, Billings, Great Falls, Laurel, Lewistown, and Miles City.

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11 Hearings before the House Committee on Banking and Currency under H. Res. 141, 71st Cong., 2nd Sess., Vol. I, Part 1, p. 441 et seq. (1930).

12 Id. pp. 361-364 or Note 11, pp. 361-364.

This was a matter of some concern to the Congress when it held hearings on branch, chain, and group banking in 1930. E. W. Decker, representing Northwest Bancorporation (the holding company owning Intervenors here) testified at the House Committee Hearing[13] concerning Montana and the Dakotas:

> "The feeling exists throughout our entire district and in my judgment to attempt to force branch banking at this time on those people, in lieu of group banking would stir up the biggest hornet's nest that you have seen for some time, because that is a big country and there are a lot of people and a great many banks, and they are *unalterably opposed to branch banking.*
>
> * * * *
>
> "In the small towns, the so-called crossroads towns, I will admit that we have a real problem. A town which is so small that it cannot support a unit bank, regardless of whether it is independent or in a group, but which is large enough to be entitled to some banking facilities, will probably need *some kind of a branch or teller's window.*" (Emphasis supplied)

From this material it is beyond question that at least from 1923 the concept of *offices* as something other than branches was well known and accepted. And it is apparent from this material that the concept of *offices* embraced the conduct of extremely limited banking functions. Both the Attorney General's Opinion and the Comptroller's regulations had wide circulation

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13 Note 11, p. 795.

among bankers.[14] Presumably the Comptroller's Regulations were disseminated to all national banks.

And so in 1930, an officer of a bank holding company, with banks in the Montana area, testified to the need in Montana of some kind of a branch bank or teller's window, and of the unalterable opposition of the people to branch banking. This testimony was given a scant year before the 1931 Montana legislature enacted the statute providing for *offices* upon consolidation.

In July 1930, a leading banking publication published an aritcle by the Commissioner of Banks of Minnesota calling for legislation that would provide "some kind of banking service" in Minnesota and other states, citing the loss of 154 banks in Minnesota in the past 10 years. (Appendix D)

The District Court's conclusion that a 1931 Montana legislator had only the image of a *branch bank* before his eyes when he voted "aye" on the statute in question, does not appear to be accurate. Banking *offices* that were something less than a branch bank were a well known entity. There was thought to be a need for some kind of banking facility in the many "cross-road" towns

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14 JOURNAL OF THE AMERICAN BANKERS ASSOCIATION, Nov. 1923, p. 322, in which the Comptroller's Regulations concerning limited offices were printed in full.

of Montana. And Montana had a four-year-old statute prohibiting branch banking.[15]

Perhaps the key to the District Court's reasoning is the use of the present tense in the statement: ". . . in Montana, at least, there is no other image of a bank office." That is probably true for today. The statute in question had been on the books for thirty-five years when Intervenor-Appellees made their application, the first application that has ever been made to consolidate *and* branch. (There have been other mergers but no attempts at branching.) But the problem here is not the image of today; rather it is the image of 1931 with which we are concerned. That image included an antipathy to branch banking and knowledge of a facility that was something less than a branch bank.

3. *The Montana Statute is Sui Generis.*

At about the time the Montana statute was enacted 8 states permitted state-wide branching by specific statute; 19 states, including Montana, prohibited branch banking in any form; 11 states permitted branch banking in limited areas; 3 states permitted limited banking activities outside of the parent bank; and only 7 states

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15 We will concede the District Court's characterization of the Frowning Banker with our own observation that Montana Bankers did not have much to smile about in 1931.

were so indifferent on the subject as to have no legislation one way or the other. (Appendix E)[16]

Of the three states—Vermont, Iowa, and Wisconsin —that permitted limited banking activities outside of the parent bank, Vermont permitted "Agencies";[17] Wisconsin[18] provided for "receiving and disbursing stations" limited to towns of less than 800 persons; and Iowa[19] on March 19, 1931, amended its statute prohibiting branch banking by adding a provision that

> ". . . any banking institution may establish an *office* for the sole and only purposes of receiving deposits and paying checks and for performing such other clerical and routine duties not inconsistent with this act. No banking institution may establish any office beyond those counties contiguous to the county in which said banking institution is located. . . . No office shall be continued at any place after a banking institution has actually commenced business at that place . . . ."[20] (Emphasis supplied)

After the 1931 Montana legislature enacted Sec. 5-1124, Montana stood alone in its posture of forbidding

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16 Note 11. In the hearings before the House Banking and Currency Committee, 1930, this statement of former Comptroller Dawes, ". . . the subject of branch banking — the outstanding problem in our banking system today," was introduced (p. 226). And Governor Young testified, p. 419, "The Board feels that group, chain, and branch banking presents one of the most important and most difficult problems of our changing banking structure before the country at the present time."

17 Note 8, p. 204.

18 Id., p. 206 or Note 8, p. 206.

19 Id., pp. 190, 191 or Note 8, p. 190.

20 Relative to the last discussion it is interesting to note the use of the word **office**, and the apparent awareness of the Comptroller's 1923 Regulations — Appendix B, limiting activities to the receipt of deposits, cashing checks and "routine" duties.

branch banking by one statute, and permitting the maintenance of an office after the consolidation of two banks by another statute. So far as we can determine Montana still stands alone in this. This statute being *sui generis*, and never having been availed of for branching purposes in 35 years, it must be interpreted in light of the historical background, *supra,* and the rules of statutory construction and determination of legislative intent, *infra.* The District Court's conclusion of what the 1931 legislature intended by the word *office* is at best one man's conjecture, uninhibited by recourse to the banking problems of the day or standard legal rules of interpretation.

4. *Rules of statutory construction and interpretation of legislative intent dictate a construction that offices means something less than branch bank.*

In a discussion of this aspect of the case it is important to bear in mind that branch banking was prohibited in Montana in 1927 with the enactment of Sec. 5-1028; and that *offices* after consolidation were authorized by Sec. 5-1124 in 1931. If the District Court is to be upheld in this case this Court must conclude that the non-branching statute was repealed or amended by the *offices* statute.[21]

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21 There are no verbatim records made of Montana legislative proceedsings, nor are there any committee reports that disclose legislative intent.

Repeals by implication are not favored by the courts.[22] The District Court ruled in effect that the non-branching statute was repealed to the extent that when two banks merged, a branch bank could be maintained in the location of the acquired bank. But, the legislature did not use the word *branch bank*; it used the word *office*. Accordingly if there was a partial repeal of the non-branching statute it was an unfavored implied repeal. In such a case the Montana Supreme Court has held:[23]

> "It will not be presumed that a subsequent enactment of the legislature intended to repeal former laws upon the subject, when such former laws were not mentioned. It is our duty to reconcile the statutes if it appears possible to do so, consistent with legislative intent. We bear in mind the rule that an implied repeal results only from an enactment, the terms and necessary operation of which cannot be harmonized with the terms and necessary effect of an earlier act. (Citing cases)
>
> "The presumption is that the legislature passes a law with deliberation and with full knowledge of all existing ones on the same subject, and does not intend to interfere with or abrogate a former law relating to the same matter unless the repugnancy between the two is irreconcilable." (Citing cases)

Kindred to this rule is the following:[24]

> "The use by the legislature of certain language in one instance and wholly different language in the

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22 **Cope v. Cope, 137 U.S. 632.**
23 **Fletcher v. Paige, 220 P.2d 484.**
24 50 Am. Jur., Statutes, §274.

other indicates that different results were intended, and the courts have even so presumed. Under this rule where language is used in one section of a statute different from that used in the other sections of the same chapter, it is presumed that the language is used with a different intent."

It is not difficult to harmonize the two statutes. The legislature can be presumed to have had knowledge that the U. S. Attorney General had ruled that national banks could maintain a banking office which was not a full scale branch bank. Any interpretation of legislative intent should take into account the intense feeling throughout the country about branch banking and the fact that Montana had joined the states that were opposed to it only four years before. Certainly every Montana legislator was painfully aware of the bank failure debacle of the '20s and the concomitant loss of even the minimum banking services in literally hundreds of small Montana communities.

If there is any substance to the rule that the legislature intended a different meaning when it used a different word in a later statute, this is clearly a case for application of the rule.

5. *Section 36(c) of the National Bank Act permits branching only when a state statute specifically permits it, and prohibits branching when a state statute allows it by implication. Sec. 5-1124 allows branching by implication, if at all.*

The pertinent language in Sec. 36(c) allows national banks to establish new branches:

> ". . . if such establishment and operation are at the time authorized to state banks by the law of the state in question *by language specifically granting such authority affirmatively and not merely by implication. . . .*" (Emphasis supplied)

There is no language in Sec. 5-1124, R.C.M. 1947 which *affirmatively* gives authority to state banks to branch. There is no language which *specifically* grants the authority to branch. State banks are only allowed to maintain an office. Conversion of *office* to *branch bank* must be accomplished by implication.[25] Whether or not the implication is warranted, it is an implication nevertheless. Appellants submit that under Sec. 36(c) branching by national banks would be permissible in Montana only if a Montana statute allowed branch banks *in haec verba.* Especially is this true in this case where the legislature can be presumed to have intended a different meaning by using a different word. If the non-branching Sec. 5-1028 had not been on the

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25 No state bank has ever attempted to branch under this statute. The Montana Atty. General has held that branch banking is not permissible under Sec. 5-1124 (Pl's Exh. 1). Appellants do not contend that the Atty. General's Opinion is binding on the Comptroller. However, we do note that the "competitive equality" endorsed by the Supreme Court of the United States in the Utah cases, footnote 1, has been put out of balance by the District Court's decision, with the result that national banks can branch in Montana, and state banks cannot. It is axiomatic that the Montana state courts are not bound by federal court interpretations of state law; therefore the imbalance may well be permanent.

books, or if the word *office* had been used in 5-1028 instead of *branch bank,* the results would perhaps be different.

B. The Comptroller Improperly Authorized the Anaconda Bank to Maintain the Butte Bank as its Branch in Complete Disregard of the Provisions of Section 36(b)(2) of the National Bank Act.

1. By enacting Section 36(b) of the National Bank Act in 1962, Congress provided a means to retain existing branches after a consolidation which could not have been retained under prior law.

In 1962 Congress enacted Section 36(b)(2) of the National Bank Act, 12 U.S.C. Section 36(b), which in part states:

> "(2) A national bank * * * may retain and operate as a branch * * * A main office or branch office * * * if, under subsection (c) of this section, *it might be established as a new branch* * * *" (Emphasis supplied)

If we rephrase the foregoing subsection to include the names of the banks involved in this controversy, it reads as follows:

> (2) The Anaconda Bank * * * may retain and operate as a branch * * * the main office or branch office of the Butte Bank * * * if, under subsection (c) of this section, the main office or branch office of the Butte Bank might be established as a new branch * * *

Our contention is that if the Anaconda bank were a state

bank it could not establish a new branch in Butte under the Montana Statutes; and as a result, that the Anaconda Bank, a national bank, under subsection 36(c) may not establish a new branch in Butte. The result is that under the above prohibition, the Anaconda Bank may *not* retain and operate the Butte Bank as a branch.

So far as we can determine, the District Court did not consider the provisions of Section 36(b)(2) in any manner.

We will now review the history of pertinent parts of 12 U.S.C. Section 36(b) and (c). Our aim is to show that our interpretation of 12 U.S.C. Section 36(b) is consistent with the expressed intent of Congress.

As enacted on March 3, 1865, Revised Statutes Section 5155, now 12 U.S.C. Section 36, made it lawful for any bank organized under state law to become a national bank association, and to retain and keep its branches. This provision remained unchanged from 1865 to 1927.

At the turn of the century, there were very few branch banks in the country. There were only 5 national and 82 state banks operating branches for a total of 119 branches. By the end of 1923 91 national banks and 500 state banks had a total of 2,054 branches.[26]

Following this rapid increase in branching, on February 25, 1927, the National Bank Act was amended

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26 Note 6, p. 257 (495 S. Ct. Rep.)

by 44 Stat. 1228, 12 U.S.C. Section 36. Under Section 36(b) as enacted in 1927, where two national banks consolidated, the remaining bank could retain and operate any branches which had been in lawful operation on February 25, 1927. Section 36(b) remained unchanged from 1927 to 1962. It is significant that the original Section 36(b) had no provision under which consolidating banks could retain the main office of a participating bank as a branch. Had the Anaconda Bank attempted a consolidation with the Butte Bank prior to 1962, there was no provision under Section 36(b) which would have allowed the retention of the main office of the Butte Bank under any circumstances.

The next pertinent amendment to 12 U.S.C. Section 36 was made in 1933. Congress enacted 48 Stat. 189 which amended Section 36(c). Such amendment added the present first 11 lines which make up the entire first sentence of Section 36(c). As a result of this 1933 amendment, a national bank was authorized to establish and operate new branches at any point within the state in which the association was situated, if the establishment and operation were authorized to state banks by statute law specifically granting such authority affirmatively and not by implication. As a result, starting in 1933 and continuing to the present time, a national bank could establish and operate new branches if the law of

the state in question affirmatively and not by implication, grants similar authority to a state bank. On September 28, 1962, Congress enacted what is now 12 U.S.C. Section 36(b) as a part of 76 Stat. 667. That enactment was made under H.R. 12899, which superseded H.R. 12825. The purpose of the 1962 amendment is set forth in Senate Report No. 2040, 1962 U.S. Code Cong. and Adm. News 2733-2735, a full copy of which is included as Appendix F to this brief. Senate Report 2040 points out that the purpose of the 1962 bill was to allow the retention by a national bank of existing branches upon a consolidation. This is stated in 1962 U.S. Code Cong. and Adm. News 2734 as follows:

> "* * * The bill would permit the retention, with the approval of the Comptroller of the Currency, of any branch of the bank under whose charter the consolidation is carried out, provided that a State bank carrying out a similar consolidation would not be prohibited from retaining a similar branch. * * *"

Senate Report 2040 emphasized that the purpose of Section 36(b) prior to the 1962 amendment was to prevent a bank from acquiring branches by taking over other banks in the states where branches could not be legally established under state law; and further pointed out that the retention of branches already in existence after a consolidation would not violate this purpose. This is stated at 1962 U.S. Code Cong. and Adm. News at page 2734 as follows:

> "*The purpose of the existing law is to prevent a bank from acquiring branches by taking over other banks where such branches could not legally be established under State law.* However, this purpose does not apply to the branches of a bank under whose charter a consolidation is carried out, and no public interest is served by requiring such a bank to give up its legally established branches already in existence." (Emphasis supplied)

Note that the amendment did not change the primary purpose which was the prevention of a bank acquiring branches by taking over other banks in the states where branches could not be established under state law. That statement of purpose is pertinent in Montana where no branches can be legally established under Montana Statutes.

In the 1962 amendment of 12 U.S.C. Section 36(b)(2) is the first reference to the retaining of main offices as branches. It is significant that the Senate Report emphasizes that the bill will allow the retention of branches of a bank whose charter will cease to exist by consolidation, and also the retention of main offices as branches, if all of such branches could be established on original application. This is stated in 1962 U.S. Code Cong. and Adm. News at page 2735 as follows:

> "* * * In so doing, it would preserve the existing permission for the retention of all branches of the banks whose charters will cease to exist by the merger or consolidation, and the retention of their main offices as branches, if such branches could be established on *original* application under the law of the

> State at the time of the merger or consolidation." (Emphasis supplied)

Note that the intention of the Congress was that the retention of a branch or of a main office of a bank which will cease to exist on consolidation would take place only if such a branch could be established on original application under state law.

Mr. Saxon, who was Comptroller of the Currency until just prior to the commencement of the present action, appeared before the Committee on Banking and Currency of the House prior to the 1962 amendment of Section 36(b). He emphasized that all the 1962 amendment does is to permit the retention of branches already in lawful operation by the charter bank and no more. His views are set forth in the reports on the Hearing before Subcommittee No. 1 of the Committee on Banking and Currency, House of Representatives, 87th Congress, on H.R. 12825 subsequently superseded by H.R. 12899 at page 5, where Mr. Saxon stated:

> "The second matter pertains to a minor amendment relating to the branches of national banks. It relates to branches retained upon conversion, consolidation, or merger. The bill is designed to eliminate an existing technical impediment to the conversion of state banks into national banks in certain situations. These are situations in which a State bank desiring to convert into a national bank may not, after conversion, retain as a national bank branches which it had in lawful operation as a State bank.
> * * *

"The bill would provide that such branches may be retained with the approval of the Comptroller, and it would apply to consolidations and mergers as well as conversions.

"*It is important to emphasize that all the bill does is to permit the retention of branches already in lawful operation by the charter bank, and no more.* While this bill is important in the cases in which applicable, it should be pointed out that it is of limited applicability. It would not apply in states having state-wide branch banking, nor would it apply in States which have always prohibited branch banking.

"Of the States having limited branch banking, it would apply only in those states which at one time had more liberal branch laws than at present, or in which, because of intervening factual changes, existing branches could not be reestablished. * * *" (Emphasis supplied)

Mr. Englert appeared with Mr. Saxon and also testified in behalf of the Comptroller's office. Mr. Englert emphasized that the sole purpose of the amendment was to permit a bank which has branches to merge or consolidate and keep the branches. He emphasized there were very few banks in the country and very few states in which the amendment would have any effect. His testimony is set forth at page 8 of the above cited Hearing:

"MR. ENGLERT. I would like to say, Mr. Moorhead, this is a bill of very limited application. It applies only in the case where a State had more liberal branch laws than it now has. The purpose is solely to permit a bank which has branches to

merge or consolidate or convert and keep the branches which it is then operating, and this would apply only in the case where under existing law these branches could not be reestablished. They were gotten at some time in the past when branching was permitted, but now branching under these conditions is not permitted. So there are very few banks in the country and very few states actually, in which it would have any effect."

As Mr. Saxon pointed out, the 1962 amendment of 12 U.S.C. Section 36(b) did not apply in states having state-wide branch banking, nor would it apply in states which had always prohibited branch banking. Next, Mr. Saxon pointed out that of the states having limited branch banking, the 1962 amendment would apply only in those states which at one time had more liberal branch laws than at present. Montana has never had more liberal branching laws than at present. As a result, it is clear that the Comptroller did not anticipate that the 1962 amendment would apply to Montana.

Our conclusion is that the 1962 amendment of 12 U.S.C. Section 36(b) under which the Appellees are proceeding was not intended by the Congress to cover national banks doing business here in the State of Montana. We emphasize this point in order to eliminate any suggestion that our interpretation of 12 U.S.C. Section 36(b) runs contrary to the intent of Congress.

2. The main office of the Butte Bank may not be retained as a branch because it

could not be established under Montana law as a "new branch."

Under 12 U.S.C. Section 36(b)(2), the Anaconda Bank may retain and operate the Butte Bank as a branch "if, under subsection (c) of this section, it might be established as a new branch." Might the Anaconda Bank have established a new branch in Butte? This requires consideration of the provisions of 12 U.S.C. Section 36(c) which in relevant part states:

> "(c) A national banking association may * * * establish and operate new branches * * * if such establishment and operation are * * * authorized to state banks by statute law of the state in question by language specifically granting such authority affirmatively and not merely by implication or recognition * * *"

We should keep in mind that Section 36(c) as material here, was enacted in 1933. It sets the standards for the establishment and operation of new branches, as distinguished from the continuing of any bank or branch previously in existence. Under Section 36(c) the Anaconda Bank, a national bank, may establish and operate a new branch in Butte only if a State bank located in Anaconda may establish and operate a new branch in Butte under Montana Statute law.

There is no Montana statute which allows a State bank to establish "new branches." In contrast, Section 5-1028, Revised Codes of Montana, 1947, provides that

no bank shall maintain any branch bank. In recent years Montana Section 5-1028 has been amended to provide authorization for the creation of detached drive-in and walk-up facilities. By the terms of such amendments, the service to be rendered by these drive-in and walk-up facilities is limited to receiving deposits, cashing checks or orders to pay, receiving payments payable at the bank itself and such other transactions as are normally and usually conducted or handled at teller's windows in the main banking house. Clearly, Montana Section 5-1028 cannot be construed as authorizing an Anaconda State Bank to establish and operate "new branches" in Butte or elsewhere in Montana, as referred to in 12 U.S.C. Section 36(c).

The Comptroller relies on Montana Section 5-1124 as allowing the establishment and operation of new branches by Montana State Banks. As significant here, Section 5-1124, Revised Codes of Montana, 1947, provides that the consolidated bank may "maintain and operate offices in the locations of the consolidating banks."

Does Montana Section 5-1124 meet the tests contained in 12 U.S.C. Section 36? A careful reading of 12 U.S.C. Section 36(b) and (c) determines that it does not. Using the names of the Anaconda Bank and the Butte Bank in place of the general terms of 12 U.S.C.

Section 36(b) and (c), we believe the following accurately restates these subsections as pertinent here:

> (b) The Anaconda Bank, under whose charter the consolidation with the Butte Bank is effected may retain and operate as a branch the main office or branch office of the Butte Bank if, under subsection (c) of this section, such main office or branch office of the Butte Bank might be established as a new branch of the Anaconda Bank.
>
> (c) The Anaconda Bank may establish and operate new branches in Butte if such establishment and operation are now authorized to State banks by the statute law of Montana by language specifically granting such authority affirmatively and not merely by implication or recognition.

The clear intention of Section 36(b) is that the Anaconda Bank can retain the main office or any branch office of the Butte Bank only if the Anaconda Bank could establish a new branch in Butte without any consolidation. This makes good sense. It follows the congressional intent. It does not allow an extension of branching where a consolidation takes place. It merely allows a national bank after a consolidation to retain a branch which it was authorized to establish and operate under the law, even though there were no consolidation.

The standards set up by Congress must be followed. Since 1933 Section 36(c) has set forth the standards for the establishment and operation of new branches. Section 36(b) allows the Anaconda Bank to retain the Butte Bank as a branch only if the Anaconda Bank could have

set up a new branch in Butte under Section 36(c) *in the absence of any consolidation.* No Montana statute can be construed to allow a state bank doing business in Anaconda to establish and operate a new branch in Butte in the absence of a consolidation.

As the standards set up by 12 U.S.C. Section 36 have not been met, the action of the Comptroller in approving the application must be reversed.

C. Acquisition of the First National Bank of Butte by the Holding Company, Northwest Bancorporation, is a Clear Violation of the Bank Holding Company Act of 1956 as Amended, 12 U.S.C. 1842.

Northwest Bancorporation, a Minnesota bank holding company, is attempting here to acquire ownership and control of an independent Montana bank through a purchase of its assets and consolidation with an existing subsidiary bank in Montana. *It is perfectly clear that the holding company could not legally accomplish this result by purchasing either the stock or assets of the independent bank and then consolidating the bank with its present subsidiary. The holding company in this case seeks to avoid the explicit statutory prohibition of such a purchase by characterizing the transaction as a purchase of the assets by its bank subsidiary with a consolidation to form two "divisions" of a new subsidiary.*

The statutory provision which bars further expan-

sion of Northwest Bancorporation in Montana is Section 3(d) of the Bank Holding Company Act, 12 U.S.C. 1842(d) which provides in relevant part that:

> "Notwithstanding any other provision of this section, no application shall be approved under this section which will permit any bank holding company or any subsidiary thereof, to acquire, directly or indirectly, any voting shares of, interest in, or all or substantially all of the assets of any additional bank located outside of the State in which the operations of such bank holding company's banking subsidiaries were principally conducted . . . unless the acquisition of such shares or assets of a State bank by an out-of-State bank holding company is specifically authorized by the statute law of the State in which such bank is located, by language to that effect and not merely by implication."[27]

This section of the statute was introduced in the Senate debates as an amendment by Senator Douglas of Illinois and overwhelmingly adopted.[28] The statements made by Senator Douglas in favor of the amendment leave no doubt that it was the intention of the Congress to prevent such an acquisition as the one now before this Court — a Montana bank by a Minnesota holding company. In the course of the debate Senator Douglas said:

> "I may say that what our amendment aims to do to do is to carry over into the field of holding companies the same provisions which already apply for branch banking under the McFadden Act — namely, our amendment will permit out-of-State holding

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27 No such authorization is provided in the Montana statutes.
28 102 Cong. Rec. 6857-63, April 24, 1956.

companies to acquire banks in other States only to the degree that State laws expressly permit them; and that is the provision of the McFadden Act.

* * * *

"Our amendment would prohibit bank holding companies from purchasing banks in other States unless such purchases by out-of-State holding companies were specifically permitted by law in such States.

* * * *

". . . so far as inter-state acquisition of banks is concerned, namely, purchase by bank holding companies of banks in other States, the provision in my amendment is in principle almost identical with the present provision which governs branch banking.

* * * *

"However, so far as the bank holding companies are concerned, I want to check their expansion. This seems to me to be about the best way of doing so."

The opponents of the amendment revealed a clear understanding of the effect of the amendment as is illustrated by the statement of Senator Bennett:

"I recognize that it is less severe than the House language which contains a flat, unequivocal prohibition against bank holding companies crossing State lines. But it is only slightly less severe in that it makes a blanket prohibition which can only be lifted by specific affirmative action by the States and in its present form creates an evil which I must oppose.

"The net effect of the amendment is to require every State that does not now have legislation prohibiting bank holding companies to discriminate in favor of such corporations that may be resident in

> their State and against bank holding companies resident in any other State and requires affirmative legislation to remove the discrimination."

and Senator Bricker:

> "So the effect of the Douglas amendment is to absolutely prohibit a bank from crossing State lines.
>
> * * * *
>
> ". . . the committee rejected this amendment. The Federal Reserve Board, the Comptroller of Currency, the Federal Deposit Insurance Corporation, and all the bank holding companies are absolutely opposed to it."

Thus, the debates at this point make it crystal clear that this amendment was to apply across the board to all such out-of-state acquisitions with no special treatment for holding companies to expand then existing multi-state operations.

The House Banking and Currency Committee which considered this bill after its passage by the Senate, stated in its Report No. 609, May 20, 1956, that this provision "confines future *bank acquisitions* by holding companies to the State within which the bank holding company . . ." (is principally located) (Emphasis supplied.) There is nothing to support the idea that this principle of containment and flat prohibition could be evaded merely by using the form of a consolidation with subsidiary banks. Of this idea Senator Douglas himself has stated:

> "This is contrary, in my opinion, at least, to the in-

> tent of Congress expressed in Section 3(d). It certainly is contrary to my purpose in proposing and getting the amendment passed." Hearings S. 2353, S. 2418, and H. R. 7371, before the Senate Committee on Banking and Currency, 89th Cong., 2nd Sess., Part 1, page 67.

In short, the specific intent of this provision is to prohibit the very thing that Northwest Bancorporation is attempting here; to reach out from its home state of Minnesota to take control of another independent bank in Montana.

It is obvious that Northwest Bancorporation is trying to evade this statutory prohibition by cloaking the acquisition in the form of a purchase of assets by a subsidiary bank and thereby find a loophole in the law.[29]

Presumably the legal theory is that Section 3(d) prohibiting out-of-state expansion uses the language "no application shall be approved" and thus does not apply here because of an exemption in the Act permitting this particular form of acquisition without any approval. The exemption is claimed to be found in Section 3(a) where it is provided in part that approval of the Board is required "for any bank holding company or subsidiary thereof, other than a bank, to acquire all or substantially all of the assets of a bank." The words "other than a bank" are supposed to be the loophole whereby acquisi-

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29 Pl's Exh. 11, Agreement of Consolidation.

tions in the form of asset purchases by subsidiary banks can escape compliance with any part of the Bank Holding Company Act including the flat prohibition on out-of-state expansion.

It is difficult to see how this claimed exception can be upheld in view of the very definite contrary intent of the Congress in enacting the Douglas amendment. Even without the statements of Senator Douglas and others, the language of subsection (d) effectively destroys the exception claimed to exist in subsection (a) for an acquisition by a subsidiary bank. In subsection (d) we find the words "notwithstanding any other provision of this section"; words that perforce reflect back to subsection (a). We find a prohibition against an acquisition by a bank holding company or any subsidiary thereof, omitting the key words of subsection (a): "other than a bank." And we find the prohibition of an acquisition by a holding company either *directly* or *indirectly* which can only have reference to an acquisition by a subsidiary bank.

As Appellants will now demonstrate, however, even assuming the prohibition on out-of-state expansion is ineffective to prevent acquisitions through asset purchases by bank subsidiaries, this case involves a purchase of the assets by the holding company itself directly contrary to the statute. Further, in Section 2 below, Appellants

will show that even where there is an asset purchase truly by a bank subsidiary, the exemption in Section 3(a)(4) does not extend to provide a loophole for out-of-state expansion.

1. *The acquisition of the First National Bank of Butte was in fact accomplished by a purchase of the assets by Northwest Bancorporation and not the subsidiary bank.*

The actual purchaser of the First National Bank of Butte is the holding company itself[30] and the attempt to characterize the transaction as a purchase by the subsidiary, the Daly Bank, is a shallow subterfuge. The consideration to be paid for the assets is stock of Northwest Bancorporation and the corporation which must and will furnish that consideration is the holding company, Northwest Bancorporation. The holding company has admitted that it is acquiring the stock for the very purpose of supplying the consideration for this acquisition. No manner or number of intermediate sham maneuvers can conceal the basic fact that assets are to be sold by Butte bank *not* for any assets owned by the Anaconda bank subsidiary for its own corporate purposes but actually for value supplied by the parent holding company.

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30 Pl's Exh. 11.

Further, the acquired bank in Butte is to remain a distinct and separate operating entity as a "division" of the shell created by formal consolidation. This certainly does not suggest the case of an existing subsidiary expanding to control and operate another bank as a branch in an integrated operation. What is now the First National Bank of Butte will simply become the First National Bank (Butte Division), the equivalent of a new and additional subsidiary of the holding company. Just as the asset purchase is actually by the holding company itself rather than by the Anaconda bank subsidiary, it is also transparent that the transaction is not designed to expand the present Anaconda subsidiary in any real sense but in fact to acquire and maintain as a functionally independent organization another subsidiary of the holding company. Obviously the Anaconda bank is involved here only as an artificial participant. The Anaconda bank is not a sham entity, but its role here is purely artificial and this fact is decisive of this case.

These facts reveal that the holding company is the purchaser here. Therefore the transaction is squarely within the scope of Section 3(a)(4) of the Bank Holding Company Act and the prohibition on out-of-state expansion in Section 3(d).

In a similar case the Court of Appeals of the Dis-

trict of Columbia Circuit[31] pierced the corporate veil, saying:

> "Consequently, we pierce the corporate veil which shrouds this intricate transaction, and see Whitney-New Orleans attempting to establish a branch in Jefferson Parish in violation of 12 U.S.C. §36(c). It is a bootstrap operation by which Whitney-New Orleans, using its own funds in corporate maneuvering, seeks to establish a branch in prohibited territory. Like Jacob of old, Whitney-New Orleans covered its hands with the Esau-like plan of reorganization and, despite the telltale sound of its own voice, obtained the blessing of the Comptroller of the Currency. Unlike Isaac, however, the Comptroller was not gulled by the ruse; acting *ultra vires* in the circumstances shown, he knowingly permitted it because he considered the end desirable, and because he thought the corporate maneuvering impervious to attack. But when the corporate veil is pierced, it becomes apparent that both voice and hands were those of Whitney-New Orleans."

And this Court[32] has declined to pierce the corporate veil in a banking case, on the facts, but has not rejected the possibility in a proper case, saying: "In the banking field, as elsewhere, courts have power to 'pierce the corporate veil' when the realities require it." Certainly if there was ever a situation where the realities require that the corporate veil be pierced, this case provides it.

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31 **Whitney National Bank v. Bank of New Orleans & Trust Co.,** 323 F.2d 290, 304.

32 **First National Bank in Billings v. First Bank Stock Corp.,** 306 F.2d 937 at 942 (9th Circ., 1962).

2. *The exemption derived from the words "other than a bank" in Section 3(a) is based on the avoidance of duplicating discretionary regulation and does not extend to instances of out-of-state purchases which are prohibited* per se *by Section 3(d).*

The exemption from the general requirement of approval by the Federal Reserve Board for asset acquisitions, contained in the words "other than a bank" in Section 3(a), is based solely on the ground that asset purchases by banks themselves would require approval by other federal or state supervisory authorities. It is not based on any view that expansion in this particular form might be less dangerous to healthy competition in the banking industry than outright stock purchases by the giant holding companies. This is evident in the legislative history of the 1956 Bank Holding Company Act and is not disputed. See Hearings on H.R. 6504 before the House Committee on Banking and Currency, 82d Cong. 2nd Sess., at page 24 (1952); Hearings on S. 76 and S. 1118 before the Senate Committee on Banking and Currency, 83d Cong., 1st Sess., at pages 14, 17, 26 and 50 (1953-54). (See Testimony of Deputy Comptroller of the Currency at page 50.)

Because the exemption in the words "other than a bank" is solely intended to avoid duplication of judg-

ment and responsibility between federal agencies for approval of asset purchases by banks, *this exemption is limited to those cases where Congress intended some discretion to be exercised.* Such cases are expansion through purchases of assets of within-state banks.

In Section 3(d), Congress clearly expressed the intent that no approval was to be given for out-of-state expansion by "any bank holding company or any subsidiary thereof." It means that no exercise of discretion was called for in such cases and that federal policy was to flatly prohibit such expansion. It is just this type of situation in which the exemption for asset purchases by a subsidiary bank does *not* apply. Since the matter involved here is not to be subject to agency judgment the exemption based on letting another agency decide does not cover this.

Any other interpretation produces an absurd reading. It would interpret the statute as saying: "There shall be no out-of-state asset purchases except that subsidiary banks may do so because if this were a discretionary matter it would not be appropriate to place the discretion in the Federal Reserve Board." It is obvious that the loophole theory is based on reading a limitation into the provision prohibiting out-of-state expansion and thereby destroying its effectiveness and frustrating the clear intent. On the other hand, the reading which

matches the intent and reconciles the two subsections is to place the limitation on the exemption provision which was not intended to cover cases where no discretion by the Board would be necessary.

Any other interpretation of subsections 3(a) and 3(d) makes 3(d) an absolute nullity, and we might just as well not have it in the law. But it is a part of the law and it was put there to check the further expansion of bank holding companies across state lines.

The meaning of the section is clearly that the Bank Holding Company Act extends to acquisitions by purchase of assets except where the problem of duplicating the authority of other supervisory agencies requires exemption for such purchases by subsidiary banks. Since out-of-state expansion, however, is by federal policy *never* to be permitted, without specific state statutory authorization, there can be no exemption in this situation.

VIII.

CONCLUSION

The District Court should be reversed.

Respectfully submitted,

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CERTIFICATE

JOHN M. SCHILTZ, one of counsel for Appellants, states as follows:

I certify that, in connection with the preparation of this brief, I have examined Rules 18, 19, and 39 of the United States Court of Appeals for the Ninth Circuit, and that in my opinion, the foregoing Brief is in full compliance with those rules.

.....

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CERTIFICATE OF SERVICE

I hereby certify that Brief of Appellants has been served by mailing three copies thereof to each of the following counsel of record in this cause: Moody L. Brickett, United States Attorney for the District of Montana, Federal Building, Butte, Montana 59701 and Stephen R. Felson, United States Department of Justice, Appellate Section, Civil Division, Washington, D.C., Attorneys for Appellee; and to McKeon and Brolin, 122-126 Oak Street, Anaconda, Montana 59711, Johnson & Johnson, 1st National Bank Building, Butte, Montana 59701, and John D. French, 1260 Northwestern Bank Building, Minneapolis, Minnesota 55402, Attorneys for Intervenor-Appellees.

Dated January ....., 1968.

.....

JOHN M. SCHILTZ
One of Counsel for Appellants

OPINION

OF

HON. HARRY M. DAUGHERTY OF OHIO

APPOINTED MARCH 5, 1921

POWER OF NATIONAL BANKING ASSOCIATIONS TO ESTABLISH OFFICES

National banking associations have the power to open and operate offices at places other than their banking houses within the place specified in their organization certificate for the performance of such routine services as the receipt of deposits and the cashing of checks for their customers.

National banking associations have no authority to open offices for the purpose of receiving deposits, paying checks, etc., outside of the limits of the city or place designated in the organization certificate as the place of its operations of discount and deposit.

DEPARTMENT OF JUSTICE

October 3, 1923

Sir: I have your letter of August 30, 1923, requesting my opinion on the power of national banking associations to open and operate offices at places other than their banking houses for the performance of such routine services as the receipt of deposits and cashing of checks for their customers. You request to be advised whether:

"(1) Assuming that a national banking association is without power to establish and maintain a branch bank for carrying on a general banking business, has it the corporate power to open and operate an office or offices at a place or places other than its banking house, for the performance of such routine services as the collection of deposits and cashing of checks for its customers?

"(2) If a national banking association has the corporate power to open and operate such an office or offices, must they be located within the city limits of the place designated in the organization certificate of the association as the place where its operations of discount and deposit would be carried on?

The statutes relating to national banking associations, so far as they are material to our present inquiry, are sections 5133, 5134 (par. 2), 5136 (par. 6 and 7), and 5190, R. S. The material parts of said statute read as follows:

"Sec. 5133. Associations for carrying on the business of banking under this Title may be formed by any number of natural persons, not less in any case than five. They shall enter into articles of association which shall specify in general terms the object for which the association is formed and may contain any other provision, not incon-

sistent with law, which the association may see fit to adopt for the regulation of its business and the conduct of its affairs.

* * * * *

"Sec. 5134. The persons uniting to form such an association shall, under their hands, make an organization certificate, which shall specifically state:

* * * * *

"Second. The place where its operation of discount and deposit are to be carried on, designating the State, Territory, or district, and the particular county and city, town, or village.

"Sec. 5136. Upon duly making and filing articles of association and an organization certificate, the association shall become, as from the date of the execution of its organization certificate, a body corporate, and as such, and in the name designated in the organization certificate, it shall have power—

* * * * *

"Sixth. To prescribe, by its board of directors, by-laws not inconsistent with law, regulating the manner in which its stock shall be transferred, its directors elected or appointed, its officers appointed, its property transferred, its general business conducted, and the privileges granted to it by law exercised and enjoyed.

"Seventh. To exercise by its board of directors, or duly authorized officers or agents, subject to law, all such incidental powers as shall be necessary to carry on the business of banking; by discounting and negotiating promissory notes, drafts, bills of exchange, and other evidences of debt; by receiving deposits; by buying and selling exchange, coin, and bullion; by loaning money on personal security; and by obtaining, issuing, and circulating notes according to the provisions of this Title.

"Sec. 5190. The usual business of such national banking associations shall be transacted at an office or banking house located in the place specified in its organization certificate."

The provisions of section 5190, R.S., as to the place at which the usual business of the bank shall be transacted refers to the city or town in which the bank is located and not the particular place within the city. McCormick v. Market Nat'l Bank, 165 U.S. 538, 549.

National banks have only those powers specified in the National Banking Acts, and such other powers as are necessarily incidental thereto. McBoyle v. Union Nat'l Bank, 122 Pac. 458; First Nat'l Bank v. Nat'l Exchange Bank, 92 U. S.

122, 127; Logan Co. Nat'l Bank v. Townsend, 139 U. S. 67, 73; Bullard v. Bank, 18 Wall. 589, 593.

In Bullard v. Bank, supra, the Supreme Court said:

"The extent of the powers of national banking association is to be measured by the Act of Congress under which such associations are organized."

In Logan Co. Nat'l Bank v. Townsend, supra, the court said:

"It is undoubtedly true, as contended by the defendant, that the National Banking Act is an enabling act for all associations organized under it, and that a national bank can not rightfully exercise any powers except those expressly granted by that act, or such incidental powers as are necessary to carry on the business of banking for which it was established."

It is to be observed that section 5190, R.S., relates to the "usual business" which, in my opinion, is to be construed the general banking business usually conducted by national banks. There is no statutory requirement that all the business of a national bank shall be transacted at the general office or banking house of the association.

In my opinion, a national banking association may establish in the city or place designated in its certificate of organization an office or offices for the transaction of business of a routine character, which does not require the exercise of discretion, and which may be legally transacted by the bank itself. It may not, however, establish a branch bank to do a general banking business such as is usually done by national banks. The establishment of such a branch would be illegal, and subject the offending bank to the forfeiture of its charter. 29 Op. 81.

It seems to be the intent of the National Banking Act that the business of banking ordinarily transacted by a national banking association shall be performed in the city or place designated in its organization certificate.

It has been held that a national bank can not make a valid contract for the cashing of checks upon it, at a different place from that of its residence through the agency of another bank. Armstrong v. Second Nat'l Bank, 38 Fed. 883, 886.

While national banking associations may exercise all the powers expressly given them by the statute, and such additional powers as may be necessary to carry on the business of banking, the manner in which the powers may be exercised are subject to the supervision of the Comptroller of the Currency. Should the comptroller, in the exercise of his supervisory powers over national banks, ascertain

that the directors or officers have knowingly violated, or are violating the national banking laws, he may proceed against such association, its officers, and directors as provided by section 5239, R.S., which reads as follows:

"If the directors of any national banking association shall knowingly violate, or knowingly permit any of the officers, agents, or servants of the association to violate any of the provisions of this Title, all the rights, privileges, and franchises of the association shall be thereby forfeited. Such violation shall, however, be determined and adjudged by a proper circuit, district, or territorial court of the United States, in a suit brought for that purpose by the Comptroller of the Currency, in his own name, before the association shall be declared dissolved. And in cases of such violation, every director who participated in or assented to the same shall be held liable in his personal and individual capacity for all damages which the association, its shareholders, or any other person, shall have sustained in consequence of such violation."

Answering your specific questions I have the honor to advise you as follows:

First. National banking associations have the power to open and operate offices at places other than their banking houses, within the place specified in their organization certificate, for the performance of such routine services as the receipt of deposits and the cashing of checks for their customers.

Second. National banking associations have no authority to open offices for the purpose of receiving deposits, paying checks, etc., outside of the limits of the city or place designated in the organization certificate as the place of its operation of discount and deposit.

Respectfully,

HARRY M. DAUGHERTY.[1]

To the Secretary of the Treasury.

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1 34 Op. Atty. Gen'l.

REGULATIONS OF THE COMPTROLLER OF THE CURRENCY RELATING TO ESTABLISHMENT OF ADDITIONAL OFFICES BY NATIONAL BANKS.

October 26, 1923

"1. Under the authority of the National Bank Act, as construed by the Attorney General in opinions rendered on May 11, 1911, and Oct. 3, 1923, respectively the Comptroller of the Currency will permit national banks, under the conditions hereinafter set forth, to establish one or more additional offices.

"2. A national bank will be permitted to establish such an office only in a city in which other banks are engaged in, and under existing law or regulation are permitted to engage **de novo** in, banking practices which make it necessary for the national bank in question to operate such an office in order effectively to conduct its banking business.

"3. National banks will be permitted to establish such offices only within the limits of the city, town or village named in its organization certificate as the place where its operations of discount and deposit are to be carried on.

"4. A national bank desiring to establish and to operate one or more additional offices shall make application therefor to the Comptroller of the Currency on a form prescribed or approved by him in which shall be set forth, among other things, the following:

(a) The number of offices and the proposed street location or vicinity of each.

(b) A statement of the condition of the applying bank as of the date of application.

(c) The number of banks with branches or additional offices in operation in said city.

(d) A statement of the facts and conditions which, in the opinion of the board of directors make it necessary for the applying bank to establish the proposed office or offices.

"5. Each application for one or more additional offices shall be accompanied by a certified copy of a resolution of the board of directors showing that such application has been submitted to and approved by the board.

"6. After the Comptroller has approved the application of a national bank for one or more additional offices, and before such office or offices are opened for business, a statement shall be transmitted to the Comptroller showing the street location, the purchase price paid, the annual rental cost, and the cost of equipment for each such office.

"7. Operations of additional offices of national banks established under these regulations shall be confined to the receipt of deposits and the payment of checks and other such routine or administrative functions.

"8. No investment in bonds or other securities for the account of the bank shall be made at any such additional office.

"9. No loan or discount shall be made to any customer of the bank through any such additional office that has not been authorized **at the banking house** by a resolution of the board of directors, or by an appropriate committee of such board, or by an officer or officers acting under authority from such board, and no general authority issued by the board of directors shall vest it in any officer or employee at such additional office any discretionary authority with reference to making such loans or discounts.

"10. A statement of the business conducted at such offices shall be transmitted to the banking house as of the close of business daily, shall be incorporated on the books at the banking house at regular intervals, and shall enter into all statements of the condition of the bank."

BANK SUSPENSIONS IN MONTANA FROM 1921 TO 1929 AS REPORTED IN HEARINGS BEFORE THE COMMITTEE ON BANKING AND CURRENCY, HOUSE OF REPRESENTATIVES, SEVENTY-FIRST CONGRESS, SECOND SESSION, UNDER H. RES. 141, FEB. 25, 26, AND 27, 1930, VOL. I, PART 1, PP. 361-364.

First Congressional District

Augusta 1	Hot Springs 1	Stevensville 1
Butte 1	Libby 1	Thompson Falls 1
Charlo 2	Manhattan 1	Three Forks 2
Corvallis 1	Missoula 1	Totson 1
Culbertson 2	Montague 1	Townsend 1
Darby 1	Ovanda 1	Twin Bridges 1
Dixon 1	Pablo 1	Valier 1
Drummond 1	Philipsburg 1	Virginia City 1
Eureka 1	Plains 1	Whitefish 1
Gilman 1	Plentywood 3	Wibaux 2
Glasgow 2	Polson 2	Willow Creek 1
Helena 2	Ronan 1	
		Total 43

Second Congressional District

Absarokee 1	Galata 1	Madoc 1
Antelope 1	Gardiner 1	Malta 1
Baker 3	Genou 1	Martinsdale 1
Ballantine 1	Geraldine 1	Medicine Lake 2
Barber 1	Geyser 1	Melstone 1
Bearcreek 2	Gilford 1	Miles City 2
Belmont 1	Grassrange 1	Moore 2
Belt 1	Great Falls 4	Musselshell 1
Benchland 1	Hardin 2	Nashua 1
Big Sandy 2	Harlowton 1	Neihart 1
Billings 2	Havre 3	Oswego 2
Bowdoin 1	Hedgesville 1	Poplar 3
Box Elder 1	Highwood 1	Rapelje 1
Broadview 2	Higler 1	Ringling 1
Brockway 1	Hingham 2	Rosebud 1
Browning 1	Hinsdale 1	Roundup 3
Buffalo 1	Hobson 1	Roy 2
Carlyle 1	Homestead 1	Rudyard 2
Carter 2	Huntley 1	Ryegate 2
Chester 2	Hysham 1	Saco 2
Circle 1	Ingomar 1	Sandcoulee 1
Clydepark 2	Intake 1	Savoy 1
Coburg 1	Inverness 1	Shawmut 1
Coffee Creek 1	Ismay 1	Shelby 2
Columbus 1	Joliet 1	Shepherd 1
Conrad 1	Joplin 2	Sidney 2
Cut Bank 3	Jordan 2	Stockett 1
Denton 2	Judith Gap	Sumatra 1
Devon 1	Kremlin 2	Sweetgrass 3
Dodson 1	Lambert 2	Vananda..... 1
Edgar 1	Laurel 3	Westmore 1
Fallon 1	Lavina 1	Wilsall 2
Fairfield 1	Lehigh 1	Windham 1
Fairview 2	Lewistown 2	Winifred 1
Forsyth 3	Livingston 3	Winnett 1
Fort Benton 2	Lodge Grass 1	Wolf Point 2
Fresno 1	Loma 1	
		Total 160

July, 1930 AMERICAN BANKERS ASSOCIATION JOURNAL

THE NEEDS OF BANKLESS TOWNS

By A. J. Veigel

Commissioner of Banks, State of Minnesota

There are 154 villages in Minnesota, which ten years ago had one or more banks, but which are without a bank at this time. Some of these banks were closed and many were taken over by neighboring banks in larger cities. We believe similar conditions exist in other states.

Most of these villages are not large enough to support an independent bank, but many of them are entitled to some banking services. Banking laws should be drawn, if possible, so as to give the public adequate and convenient banking services, and at the same time have all banks large enough so they can employ competent officials and have sufficient capital and earnings so they will be safe depositories.

About one-half of these 154 villages in Minnesota, which are now bankless, should have some kind of banking service. It is a severe blow to a community to be without a bank. People who would ordinarily go to such villages to do their buying and selling will probably trade at some other place where there is a bank. The result is that property value depreciates and they gradually lose out.

We do not believe that it is in the interest of our country that the population should be further centered in the large cities at the expense of these small communities. While we realize that automobiles and good roads have doomed many of these small villages, we believe there are others which can and will survive if given banking facilities.

When conditions get better, there will undoubtedly be numerous new applications for banks in many of these villages. If charters are granted for independent banks—and it is not easy to deny them where a community is so vitally interested—we will again invite a repetition of the bank troubles we have had in the past times of stress.

In view of these conditions, we have been seriously considering recommending to the legislature that a law be enacted permitting one branch bank in a village which does not have any bank or in which the existing bank voluntarily desires to become a branch of a larger bank. No bank could start a branch more than twenty miles from the main office.

We do not believe that the existing banks would oppose a law of this kind, because a branch could never be established except in a town or village where there was no bank at present, or if there were a bank, they would voluntarily have to ask to become a branch and could not be forced to do so.

A bank should have at least $25,000 capital to have one branch and at least $5,000 additional for each new branch. Most of such branches would probably have a teller who would receive deposits and pay checks and the loans would be passed on and handled almost entirely at the main office. Such a branch would be much less expensive than an independent bank, because it would not require the independent capital, would not have to pay the high taxes on its capital and surplus and would not require a high salaries officer to operate, because nearly all of the executive work could be done by the officers in the main office.

The proposed law is suggested not primarily in the interest of banks, but in the public interest of the people in these communities.

This office is not in favor of a general branch bank law. We believe our independent banks have performed a useful service in the past and will continue to do so. By having these branches limited to a radius of about twenty miles from the main office, they will still be local independent banks and could not be controlled by larger banks to the extent which would be possible if a general branch bank law were enacted.

We believe that the great strength of our country is due largely to the so-called middle class of citizens who are fairly well off. We also believe that our independent banks have had more to do in creating and maintaining this independent middle class than any other agency. It would seem desirable, therefore, to keep this local control of the banks and at the same time give these bankless towns banking services.

The law should carefully guard the establishment of such branches. Applications should be made to the securities commission the same as applications for a new bank charter. Not more than one branch should be permitted in any village and none where there are one or more independent banks.

If a law is passed in any state and proves desirable, Congress would undoubtedly amend the national bank act to give national banks the same privilege.

We believe this subject is entitled to serious consideration and discussion with the end in view of finding some way adequately to serve the public without at the same time inviting a repetition of the small bank trouble of the past, or of having local banks owned and controlled from distant large cities.

SUMMARY OF STATE LAWS RELATIVE TO BRANCH BANKING AS OF 1932, FROM **FEDERAL RESERVE BULLETIN**, JULY 1932, P. 455, AND REPORT OF THE FEDERAL RESERVE COMMITTEE ON BRANCH, GROUP AND CHAIN BANKING, ENTITLED **BRANCH BANKING IN THE UNITED STATES**, FEDERAL RESERVE LIBRARY H.G. 1617, U.1, VOL. 2, PP. 181-210.

States Permitting State-wide Branch Banking	States Prohibiting Branch Banking	States Having No Legislation Regarding Branch Banking
Arizona	Alabama	Kentucky
California	Arkansas	Michigan
Delaware	Colorado	New Hampshire
Maryland	Connecticut	North Dakota
North Carolina	Florida	Oklahoma
Rhode Island	Idaho	South Dakota
South Carolina	Illinois	Wyoming
Virginia	Kansas	
	Minnesota	
	Missouri	
	Montana (1)	
	Nebraska	
	Nevada	
	New Mexico	
	Oregon	
	Texas	
	Utah	
	Washington	
	West Virginia	

States Permitting Branch Banking In Limited Areas	States Permitting Limited Banking Activities Outside of Principal Office	States Permitting Retention of an Office After Consolidation
Georgia	Vermont (agencies) (3)	Montana (1)
Indiana	Iowa (4)	
Louisiana	Wisconsin (2)	
Maine		
Massachusetts		
Mississippi		
New Jersey		
New York		
Ohio		
Pennsylvania		
Tennessee		

(1) Montana specifically prohibited any "branch banks" by 1927 statute. By a separate 1931 statute, Montana allowed maintenance of an "office" after the consolidation of two banks in the same or adjoining counties.

(2) Wisconsin, by 1932 statute, authorized the establishment of "receiving and disbursing stations," similar to "offices" in Iowa.

(3) Vermont, by 1929 statute, permitted "agencies."

(4) Iowa, by 1927 statute absolutely prohibited branch banks. By 1931 amendment banks were allowed to "establish an office for the sole and only purposes of receiving deposits and paying checks and performing such other clerical and routine duties not inconsistent with this act."

Senate Report No. 2040, Sept. 13, 1962
[To accompany H.R. 12899]

House Report No. 2256, Aug. 20, 1962
[To accompany H.R. 12899]

The Senate Report is set out.

Senate Report No. 2040

The Committee on Banking and Currency, to whom was referred the bill (HR. 12899) to amend section 5155 of the Revised Statutes, relating to bank branches which may be retained upon conversion or consolidation or merger, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

PURPOSE OF THE BILL

H.R. 12899 would amend subsection (b) of section 5155 of the Revised Statutes. Under this subsection in conjunction with other provisions of existing law, when a bank converts from a State to a National charter, it must give up any of its branches established after February 25, 1927, unless such branches can be newly established under State law at the time of conversion. This is a result which is brought about by Federal law and not by State law. In other words, the Federal law precludes the coverage by State grandfather clauses of branches established after February 25, 1927.

The bill would change this by permitting the same branch retention privileges to a bank converting from a State to a National charter as the law of the State permits to a bank converting from a National to a State charter, except that in any given instance the retention of a branch established after February 25, 1927, would be subject to the approval of the Comptroller of the Currency.

A similar situation obtains with respect to consolidations. Under existing law, a national bank must close any branch established after February 25, 1927, when the national bank consolidates with any other bank, unless the branch in question could, under State law, be newly established at the time of the consolidation. The bill would permit the retention, with the approval of the Comptroller of the Currency, of any branch of the bank under whose charter the consolidation is carried out, provided that a State bank carrying out a similar consolidation would not be prohibited from retaining a similar branch. The bill would also define "consolidation" to include a merger, as the practical effect of the two is the same.

GENERAL STATEMENT

The existing law as to retention of branches in cases of conversion, consolidation, or merger operates as a deterrent to State banks converting into National banks in certain States, and hence is inconsistent with the dual banking system, which contemplates that State banks should be able to convert freely into National banks and vice versa. The bill, as in the case with existing law, would have no application in those States which have unlimited branch banking, or in those States where branch banking is prohibited. Its effect would be felt only in States which permit a limited form of branch banking, and which at one time had more liberal branch laws than at present, or in which because of intervening factual changes, existing branches could not be reestablished. In such States, upon conversion, consolidation, or merger, a bank may have to give up all of its branches acquired since February 25, 1927.

The purpose of the existing law is to prevent a bank from acquiring branches by taking over other banks where such branches could not legally be established under State law. However, this purpose does not apply to branches of a bank under whose charter a consolidation is carried out, and no public interest is served by requiring such a bank to give up its legally established branches already in existence.

The bill would remove this inequality to our national banks without departing from the purpose of the existing law. It would permit the retention of those legally established branches of the national bank under whose charter the merger or consolidation is being effected, subject to the approval of the Comptroller, and subject to the absence of provisions in the appropriate law of the State which would deny retention in identical circumstances where the resulting bank is a State bank. In so doing, it would preserve the existing permission for the retention of all branches of the banks whose charters will cease to exist by the merger or consolidation, and the retention of their main offices, if such branches could be established on original application under the law of the State at the time of the merger or consolidation.

Hearings were held on R.H. 12899 on August 30, 1962. The three Federal bank supervisory agencies, the American Bankers Association, and the National Association of Supervisors of State Banks supported the bill. No opposition was expressed.

Exhibits

Number of Letter	Description	References to Record (Tr. of Proceedings, August 7, 8, 1967)
Pls'. No. 1	Montana Atty. Genl's Opinion	Admitted 5
Pls'. No. 2	Statement in Opposition to H. B. 509	Admitted 8
Pls'. No. 10	Application to Comptroller by Intervenors to Consolidate and Branch	Admitted 23
Pls. No. 11	Consolidation Agreement Among Intervenors and Northwest Bancorporation	Admitted 27
Pls. No. 12	Fed. Res. Report to Comptroller, attached to Pls. Exh. 10	Admitted 224
Defs. Exh. A	Copy of H. B. 205	Admitted 8
Defs. Exh. B	Copy of Pl. Leuthold Testimony Before Montana Legislature on H. B. 509	Admitted 8
Defs. Exh. C	Certified Copy of H. B. 509	Admitted 8
Defs. Exh. D	1931 Newspaper Account	Refused 212
Defs. Exh. E	1931 Newspaper Account	Refused 212
Defs. Exh. F	Decision of Comptroller on Consolidation	Admitted 220
Defs. Exh. G	Dept. of Justice Report to the Comptroller	Admitted 221